

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ROSEMARIE JOYCE LANDINI,

Defendant-Appellant.

UNPUBLISHED

February 9, 2006

No. 256875

Wayne Circuit Court

LC No. 88-014681-02

Before: Meter, P.J., and Whitbeck, C.J. and Schuette, J.

MEMORANDUM.

Defendant appeals by delayed leave granted her sentence following her plea of guilty of a probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant originally pleaded guilty on December 16, 1988 to possession with intent to deliver less than fifty grams of a controlled substance, MCL 333.7401(2)(a)(iv). She was placed on lifetime probation on January 24, 1989. Following the probation violation, she was sentenced on May 20, 2004 to forty-two to 240 months in prison on her original conviction.

The judicial sentencing guidelines applied to crimes committed before January 1, 1999. MCL 769.34(1). However, these guidelines were not applicable to a wide variety of offenses, including sentences imposed after probation violations. *People v Parker*, 267 Mich App 319, 322; 704 NW2d 734 (2005); *People v Cotton*, 209 Mich App 82, 83-84; 530 NW2d 495 (1995).

Defendant acknowledges that the judicial sentencing guidelines applied at the time of her initial offense. However, she maintains that because her violation occurred in 2004, the trial court was required to apply the statutory sentencing guidelines during resentencing.

We disagree. Contrary to defendant's assertion, "a probation violation does 'not constitute a separate felony . . .'. Rather, 'revocation of probation simply clears the way for a resentencing on the original offense.'" *People v Hendrick*, 472 Mich 555, 562; 697 NW2d 511 (2005), quoting *People v Kaczmarek*, 464 Mich 478, 482-483; 628 NW2d 484 (2001). Defendant's probation violation was not a "separate felony" that required the application of the statutory sentencing guidelines. Because defendant committed the felony of possession with intent to deliver a controlled substance less than fifty grams in 1988, we reject her argument that the trial court erred in failing to resentence her under the statutory sentencing guidelines.

Affirmed.

/s/ Patrick M. Meter

/s/ William C. Whitbeck

/s/ Bill Schuette